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April 21, 2023

*Via ECF*

The Honorable Lorna G. Schofield  
United States District Court for the Southern District of New York  
Thurgood Marshall Courthouse  
40 Foley Square  
New York, New York 10007

*Re: McKoy, et al. v. The Trump Corp., et al., No. 18 Civ. 9936 – Letter Motion to Seal*

Dear Judge Schofield:

We write on behalf of Plaintiffs and the putative classes in the above-referenced action, pursuant to Rule I.D.3 of your Honor's Individual Practices, to respectfully request provisional approval to file under seal: (1) an unredacted version of Plaintiffs' Reply Memorandum of Law in further support of Plaintiffs' Motion for Class Certification and (2) certain exhibits supporting Plaintiffs' Motion.<sup>1</sup>

Exhibit 1 is a document that has been designated as "Confidential" by non-party ACN, under Paragraph 3 of the operative Protective Order entered by the Court on September 10, 2019. *See* Dkt. 112. Exhibit 3 is a deposition transcript that has been designated as "Confidential" by Defendants. Plaintiffs' Memorandum of Law refers to and/or quotes from these same materials that have been designated as "Confidential" by Defendants and ACN. Plaintiffs' Memorandum of Law also quotes from Exhibit 16 to Plaintiffs' opening brief, which was designated as confidential by non-parties the Success Entities.

Exhibit 2 contains excerpts of the Expert Report of Stacie Bosley, which Plaintiffs

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<sup>1</sup> In accordance with Rule I.D.3 of the Court's Individual Practices, an unredacted copy of the Memorandum of Law, with redactions highlighted, will be filed under seal contemporaneously with this letter motion. *See* Standing Order, 19-mc-00583 (Dec. 19, 2019); Electronic Case Filing Rules & Instructions, Rule 6.8. Plaintiffs will timely serve the unredacted version on Defendants and will timely serve partially unredacted versions on the non-parties referenced in this letter.

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designated as “Confidential.” This report references, quotes, and relies on various materials designated confidential by Defendants, ACN, and other non-parties, including revenue, marketing, and pricing information. *See Hypnotic Hats, Ltd. v. Wintermantel Enterprises, LLC*, 335 F. Supp. 3d 566, 600 (S.D.N.Y. 2018) (characterizing “marketing plans, revenue information, [and] pricing information” as “categories commonly sealed”).

Pursuant to the Protective Order, the party “with an interest in confidential treatment bears the burden of persuasion.” Dkt. 112 at 5. With respect to Exhibits 1 and 3, Defendants, ACN, and the Success Entities, as the parties that made the relevant confidentiality designations, have the “interest in confidential treatment” of these materials. *Id.* Accordingly, on April 20 and 21, 2023, we notified counsel for Defendants, ACN, and the Success Entities concerning our intent to file the Memorandum of Law and certain supporting exhibits under seal with material designated Confidential redacted in the publicly filed version of the Memorandum of Law.

Plaintiffs take no position at this time concerning Defendants’, ACN’s, and the Success Entities’ confidentiality designations. Plaintiffs further respectfully reserve the right to challenge the relevant confidentiality designations in the future pursuant to Paragraph 15 of the Protective Order.

Respectfully submitted,

/s/ Matthew D. Brinckerhoff

KAPLAN HECKER & FINK LLP

/s/ John C. Quinn

cc: All Counsel of Record (via ECF)